

May 14, 2015

Federal Reserve Board
Secretary, Board of Governors
20th Street and Constitution Avenue, NW
Washington, DC 20551

RE: EGRPRA; Docket No. R-1510; Comments on Regulation D - Reserve Requirements

Dear Robert deV. Frierson,

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), one of the largest state trade associations for credit unions in the United States, representing the interests of approximately 400 credit unions and their 10 million members. The Leagues welcome the opportunity to provide comments to the Federal Reserve Board (Board) on its review of regulations under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA).

Credit unions are highly regulated financial institutions, complying with innumerable regulations from a variety of agencies, including the Federal Reserve System. The Leagues appreciate the Board's commitment to review their regulations to identify outdated or otherwise unnecessary regulatory requirements. To that end, we offer the following comments on two Board regulations.

Regulation D - Reserve Requirements of Depository Institutions

Our primary concern with Regulation D is the transaction limit on savings accounts. Changes in the financial services industry and consumers behavior make this arbitrary transaction limit outdated.

The purpose of Regulation D is to establish the monetary reserves that depository institutions are required to maintain to facilitate the implementation of monetary policy by the Board. Regulation D controls how credit unions define certain terms and conditions of deposit accounts, since the characteristics of the account determines whether the credit union must maintain monetary reserves on the account. Transaction accounts are subject to reserves, while credit unions' regular share savings accounts are not.

Regulation D defines transaction accounts as those accounts that allow unlimited third-party transfers and do not impose early withdrawal penalties [§204.2(e)], this includes credit unions' share draft checking accounts.

Regulation D defines savings deposits as those accounts where the member may at any time be required by the credit union to give written notice that he intends to withdraw the funds. In addition, Regulation D limits to six the number of preauthorized

or automatic withdrawals, telephone transfers, or electronic transfers to another account of the member at the same credit union or to a third party during a calendar month or statement cycle (defined as a period of at least four weeks). [§204.2(d)] If members are allowed to exceed this limit, then this account type would be categorized as a transaction account and trigger reserve requirements.

In today's world members not only expect but demand the convenience of electronic banking, by personal computers and mobile applications, allowing them to better manage their funds.

In addition, when credit union members have a checking account with a linked savings account and a transaction is presented against non-sufficient funds, funds transfer from their savings to their checking to cover the item. However, these transfers are subject to the Regulation D transfer limit.

For example: When a member reaches six transfers from their savings account in one month then another transfer cannot occur; the credit union must either reject the transaction or overdraft the checking account, and the member may incur either an overdraft or non-sufficient funds fee. In a survey of our credit unions, 35% of credit unions do not charge a fee for transferring from a linked savings account, and of the credit unions that do charge a fee, the average fee is \$3 – much less than an overdraft or non-sufficient funds fee.

Regulation D is problematic for members in managing their funds and avoiding unnecessary fees. It also creates a burden on credit unions that spend countless hours monitoring transactions that exceed the limits and explaining to members why their transactions were rejected or their accounts overdrawn and why they incurred fees when they had available funds in their savings account.

The Leagues understand the U.S. Government Accountability Office (GAO) is conducting a study of Regulation D. We are confident the GAO study will also report on the negative impact Regulation D transaction limits have on consumers and their ability to manage their finances in the 21st century.

The Leagues recommend the outdated and arbitrary six transfers limit be removed.

Regulation CC - Availability of Funds and Collections of Checks

In February 2014, the Board proposed changes to subparts C and D of Regulation CC in Availability of Funds and Collection of Checks - Docket No. R-1409, RIN 7100-AD68 3 (proposed rule). Since the Federal Reserve has not yet issued a final rule, the Leagues take this opportunity to reiterate our concerns on the proposed rule's effect on remote deposit capture (RDC).

The Board proposed to establish an indemnity relating to RDC items that would cover depository financial institutions that accept an original paper check for deposit that is subsequently returned unpaid because it was previously paid. The proposed rule

would allow the depository bank that accepts the original paper check to make a claim against the depository bank that permitted RDC for up to one year after the date of the occurrence. In this scenario, whoever has the paper wins.

The Board contends that a depository bank that permits its customers to truncate checks and deposit electronic images (RDC) accepts the liability that their customers may intentionally or mistakenly deposit original paper checks in other depository institutions. The Leagues refute that argument in that credit unions and banks address the risk of intentional and unintentional duplicate deposits by implementing risk mitigation procedures with their RDC program. These include setting qualification requirements, educating members/customers' of their responsibilities regarding the retention, storage, and destruction of checks, and outlining these requirements in RDC agreements and disclosures.

The Leagues strongly oppose creation of the proposed truncating bank indemnity. The Fed's intention in issuing their proposed rule is to facilitate and encourage the banking industry's transition to fully electronic processing. Credit unions and their members desire the same thing, fully electronic banking. Electronic banking is the new normal and it continues to expand through innovation.

Implementing this indemnity rule for truncating banks will have a significant adverse impact on credit unions and small community banks that may be forced to exit the RDC business because they cannot afford to take on the liability. These small financial institutions will be left unable to compete in the marketplace.

Another flaw in the proposal is that it contemplates one truncating bank, when in theory there may be multiple truncating banks. The proposed rule would allow a depository bank that accepted an original paper item to make a claim against a truncating bank that did not receive a return of the item. The recourse for additional truncating banks that did receive a return is to attempt recovery from the depositor who was unjustly enriched. This should be true for all banks receiving a return because the item has already been paid, whether the bank accepted an original paper check or an electronic image.

The Leagues fervently oppose creating this indemnity for truncating banks. We maintain that the financial institution of first deposit, whether by electronic image or by paper check, should be protected—as they accepted a deposit, did not receive a return of the check unpaid, and therefore made funds available to their member or customer. The financial institution receiving the return should attempt to recover the loss from the depositor.

Conclusion

Thank you for the opportunity to comment on the Board's review of regulations under EGRPRA. Credit unions perform an important role in the financial system – providing their members and communities with personal service as well as the products and services they demand in today's electronic environment. We urge the Board to

consider our views on Regulations D and CC to help reduce regulatory burden on credit unions and remove barriers for consumers.

Sincerely,

Diana R. Dykstra
President and CEO
California and Nevada Credit Union Leagues

cc: CUNA, CCUL